

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
WIRELESS TELECOMMUNICATIONS BUREAU	)	
AND WIRELINE COMPETITION	)	WT Docket No. 19-250
	)	
BUREAU SEEK COMMENT ON WIA PETITION	)	WC Docket No. 17-84
	)	
FOR RULEMAKING, WIA PETITION FOR	)	RM-11849
	)	
DECLARATORY RULING AND CTIA PETITION	)	
	)	
FOR DECLARATORY RULING	)	

**COMMENTS OF THE CITY OF SEATTLE**

These comments are submitted by the City of Seattle in response to the Commission's call for input on the issues raised by the three Petitions and the requests to adopt new rules, or clarify existing rules, regarding Section 6409(a) of the Spectrum Act of 2012 (6409 Rules or 6409).

These comments address misrepresentative Petitioner references made to City of Seattle application practices, references that should not be used to sway the Commission to think there is cause to support further federal control of local permitting authority. These comments also raise concern with Petitioner requests for action that would allow applicants to consider projects as 'deemed granted' and undertake unpermitted construction in our city at the expense of the public interest. Lastly, the Commission is asked to consider industry practices that contribute to deployment delays and to address any perception that industry does not have a central role in reducing or preventing delays through its own staffing and application process improvements.

## WIA'S PETITION FOR DECLARATORY RULING INAPPROPRIATELY REFERENCED PRACTICES EMPLOYED BY THE CITY OF SEATTLE

### WIA incorrectly states pre-application appointments or meetings are delaying deployments

In its petition the WIA asserts that Commission action is needed because *localities continue to misunderstand or game the process to prevent the Section 6409(a) shot clock from starting*.<sup>1</sup> Specifically, they claim that the City of Seattle's use of pre-application appointments or meetings is such an attempt.<sup>2</sup> The purpose of pre-application meetings is to support applicants in the overall process and to avoid application issues and unnecessary delays. Since the Commission's 2014 adoption of the 6409 Rules, Seattle has proactively adapted operational steps for intake methods. This is to ensure we conform with the letter and spirit of the federal guidance to reasonably limit the permit review timeframe. Our land use permitting authority, Seattle Department of Construction and Inspections (SDCI), developed a clear process for applicants to identify if they are applying for a facility under 6409 provisions.<sup>3</sup> When applicants follow this process to identify as a 6409 eligible facility, the application is properly routed for the right kind of review – one that is streamlined and avoids unnecessary delays.

Additionally, we have no evidence that these processes are unnecessarily burdensome towards applicants. Since 6409 has been in effect, Seattle has received only a relatively modest volume of permitting requests for facilities specifically as 'eligible facilities' under the 6409 Order. We have experienced no local complaints from carriers related to an inability to meet 6409 application shot clocks. In fact, an industry contact we work with on a regular basis, an attorney representing a large carrier, has expressed appreciation for the level of process reform and permit processing efficiency that Seattle has already achieved. The WIA mischaracterized a process designed to assist applicants and streamline the review process as an example of Seattle instead "gaming" the process. The WIA should not mischaracterize the City of Seattle in this way to support its asserted argument that the Commission should clarify that Section 6409(a) and the related shot clock apply to all authorizations necessary to deploy wireless facilities. The WIA's unfounded accusation should not sway the Commission into thinking

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<sup>1</sup> See Petition for Declaratory Ruling, WIA, August 27, 2019, at page 8

<sup>2</sup> *Id.* at footnote 27

<sup>3</sup> See City of Seattle [Telecommunications Eligible Facilities Application](#) and [Client Assistance Memo 211C -Minor Communications](#)

there is sufficient cause to impose further federal control over local processes and permitting authority to speed the deployment of colocations.

WIA incorrectly cites requirement for RF reports as delaying application process and does not acknowledge the role RF reports play in local public safety

The WIA also specifically names Seattle as an example to support its assertion that Commission action is needed because *various localities are imposing process and/or information requirements that substantially delay, defeat, or reduce the protections afforded under Section 6409(a).*<sup>4</sup> Specifically, they assert that our requirement to submit *RF reports for local approval*<sup>5</sup> as part of the application process contributes to an onerous process that delays or defeats their 6409 protections. Seattle has taken steps to afford a faster intake process and review timeframe for 6409 applications, and in that process have specifically chosen to not abandon asking for a NIER RF finding with an application, for the sake of ensuring public safety at specific sites. This step is not overly burdensome and its contribution to the length of the overall application process is misstated, in that RF radiation strengths are not likely to be a significant issue in almost any installation. Moreover, in the city's experience, an appropriately qualified engineer can verify the necessary information ahead of time and incorporate it as part of the submitted application materials.

It is surprising that WIA members would name RF reports as being burdensome and problematic to submit to local reviewers given the principal role they play in promoting public safety. As the Commission has experienced, many Americans have - and continue to express - health and safety concerns related to the deployment of wireless facilities. This is expected to continue with the increasing density of small cell antennas in communities. This is a very local issue, and since the Telecommunications Act of 1996 expressly preempts state and local governments from addressing safety and health concerns over RF emissions, the city must ensure that each facility deployment continues to comply with the FCC's emissions standards. While the city cannot deny a permit to construct a wireless facility on the basis of health concerns, to address the concerns of our residents the city requires an RF emissions study to ensure, together with all other transmitting antennas on the site, it is consistent with all provisions of FCC radio frequency radiation exposure guidelines. We ask the Commission to support this emphasis on public

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<sup>4</sup> See Petition for Declaratory Ruling, WIA, August 27, 2019, page 21

<sup>5</sup> *Id.* at footnote 22

safety and reaffirm it is both necessary and not an unnecessarily burdensome requirement for wireless applicants.

## **WIA'S DEEMED GRANTED REMEDY FOR CONSTRUCTION PERMITS COULD LEAD TO UNINTENDED NEGATIVE CONSEQUENCES**

In considering whether the Commission should preempt local permitting authority in cases where a siting authority fails to act in a timely manner on an application for an eligible facilities request (EFR) under 6409, we request the Commission appreciate the role that permits play in the function of the city. That is, our city permitting process is the mechanism through which we ensure the public, and property, are protected from hazards. It is how we consider uniquely local conditions and balance other important public priorities, manage competing uses for the public right-of-way, and ensure safety, accessibility and consistent land use practices for our community, now and into the future. To preempt construction permitting authority with a 'deemed granted' remedy would allow private industry to construct in our community without review and safeguards, placing additional burden on city staff to accommodate the unpermitted activities of private parties and respond to any unforeseen public safety, construction, transportation, or health incidents. We recognize carriers' interest in rapid deployment of facilities to meet their economic goals, but this interest cannot be used to drive regulatory policy that has the capacity to exacerbate risks to the public. Pressures to deploy quickly increase the risks of projects cutting corners and failing to follow standards in order to meet timelines, which could result in hazards and the need for re-work, among other negative public outcomes. We object to any action that would allow applicants to consider themselves 'deemed granted' and undertake unpermitted construction in our city at the expense of the public interest.

## **THE COMMISSION SHOULD REVIEW INDUSTRY PRACTICES WHEN CONSIDERING THEIR PETITIONS**

Over the past several years the FCC has focused on local government practices as the cause of delays to the deployment of broadband and wireless services. The Commission creates risk for local communities by failing to acknowledge the role *industry* plays in deployment delays when applicants have inadequate planning and staffing systems to meet the well documented requirements of a local community. The Commission will not solve deployment delays with a singular focus on industry complaints, giving a misleading perception that industry does not have the capacity or need to reduce or prevent delays. While



local communities continue to incorporate feedback to iterate and improve processes to meet increased review and permitting demands from densifying wireless networks, industry must also work on its processes and staffing that contribute to unacceptable designs, incomplete applications, and installations that result in application and permit rejections and delays. Industry often receives the benefit of the doubt and Commission analyses should not be built on assumptions that applications have near perfect information, when in many cases they do not.

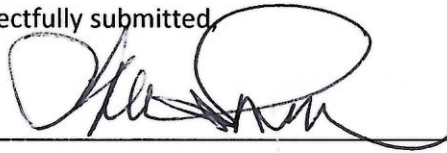
With these comments we encourage the Commission to broaden the scope of its inquiry to examine these concerns holistically. We strongly encourage the Commission to consider what practices and processes utilized by WIA and CTIA members could be significantly contributing to the delays in wireless facility deployments. In Seattle, a primary source of delay in application and permit approvals is the lack of adequate planning, design, and submission documentation by applicants. This is notable given the level of stability that exists in local codes, application and review processes, and permitting staff. The Commission might assume carriers working to deploy in Seattle would become adept at designing deployments that will meet code standards and application requirements. In fact, submissions regularly require re-work, additional information, and other application actions before they can be fully reviewed and approved. This is due to the customary practice of carriers to use subcontractors, consultants, and other vendors to complete their application work. In Seattle, we experience high turn-over in non-carrier staff which has resulted in high rates of applicants not well versed or trained in local code and practices, contributing to increased instances of unacceptable applications. The city requests that the Commission appreciate these factors when considering the potential tradeoff of public planning and safety to application approval and deployment speed.

Additionally, the city requests that the Commission note and consider that vendors hired by carriers to prepare and submit applications are often compensated by the number of applications *submitted*, not the number of applications *accepted*, encouraging a perverse incentive for submitting applications without regard for quality. As a result, carriers are willing to submit applications earlier that may be incompatible with current processes instead of spending more time planning to reduce the overall application processing time. In the cases where we work with consistent carrier staff, we rarely see processing and approval delays due to poor quality applications.

We therefore ask the Commission to review how pervasive such practices are industry-wide and how they may be contributing to delays in deployments. Failure to consider other causes contributing to the *symptom* of deployment delays, besides local government processes, will lead to further unneeded and unlawful intrusion on local permitting authority without advancing the goal of faster deployments.

Dated: October 30, 2019

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Alice Lawson', is written over a horizontal line.

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